## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO CENTRAL

## **MINUTE ORDER**

Date: 05/22/2008 Time: 01:30:00 PM Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager

Clerk: Kathleen Sandoval

Bailiff/Court Attendant: L. Wilks

ERM: Reporter:

Case Init. Date: 12/03/2001

Case No: JCCP4221 COORDINATION PROCEEDING

NATURAL GAS ANTI-TRUST CASES

Case Category: Civil - Unlimited Case Type: Antitrust/Trade Regulation

**Event Type: Discovery Hearing** 

## **Appearances:**

Appearances Nanci Nishimura present telephonically for Independent Plaintiffs. Present telephonically for Defendants are Brendand Cullen and Orly Elson, Sara Gillett, Heather Cupp, Nitin Reddy and Roxanna Manuel.

All parties submit(s) on the Court's tentative ruling.

The Court rules on defendant WD Energy Servs., Inc.'s ("WD") motion to compel Independent Plaintiffs' responses to the fourth set of requests for production of documents as follows:

Under Code of Civil Procedure section 2031.310 subd. (b), WD must establish (1) good cause and (2) a reasonable and good faith attempt at informal resolution of the discovery issue.

As to the first element, WD argues that the information sought is relevant to (1) evaluating, reducing, and generally defending against Plaintiffs' claimed damages (Code Civ. Proc. §877(b)), (2) determining whether WD should assert claims for indemnity against any or all of the Settling Defendants (*Leko v. Cornerstone Building Inspection Serv.* (2004) 86 Cal.App.4th 1109, 1114, *People v. First Federal Credit Corp* (2002) 104 Cal.App.4th 721, 732), (3) determining what cooperation obligations exist on the part of which Settling Defendants and identifying any information that may have been provided as a result thereof, and (4) evaluating and potentially providing a basis to challenge the credibility of any testimony offered by any Settling Defendant based on any cooperation obligations and the terms of the settlement (*Everman v. Super. Ct.* (1992) 8 Cal.App.4th 466, 472-473 and Code Civ. Proc. §877.5(a)(2)).

As to the second element, WD states that it unsuccessfully attempted to resolve the matter informally. (Sacks Dec., ¶¶6-8 and Exhs. C-G.)

Once the burden is met, it shifts to the non-moving party "to justify [its] objection." (*Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) Plaintiffs blanket objections without reference to any particular

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documents are inadequate.

Plaintiffs' other arguments also fail. Settlement agreements are subject to the same discovery standards as other information sought in litigation. (Code Civ. Proc. §2017.010 and Norton v. Super. Ct. (1994) 24 Cal.App.4th 1750, 1760-1762 (hereafter "Norton").) Hinshaw v. Superior Court (1996) 56 Cal.App.4th 233, 238, is factually distinguishable from *Norton* and this case.

Plaintiffs' argument that the requested information should not be produced pursuant to section 1154 fails because it is not applicable to any of the above noted reasons that WD is requesting the documentation.

Based on the foregoing, motion is granted. The following procedure shall be employed to implement appropriate production of settlement documents. WD will select three sets from among the approximately eighteen sets of settlement agreements and related documents. Plaintiffs will turn over all nonprivileged documents for the three sets together with a privilege log within fifteen days. If either side is dissatisfied with the process, both parties shall set an ex parte with the Court where an in camera review of allegedly privileged documents can be conducted. Once this phase is complete, it will serve as a template for the production of the remaining sets of settlement documents. Finally, the Court shall defer its ruling on the propriety of granting an award of costs to WD until the discovery is complete.

IT IS SO ORDERED.

The Defendants inform the Court that they have chosen the following three settlement agreements to be representative; TXU, DYNAGY AND ACQUILLA. All materials provided will be confidential under the existing protective order. Privilege log to be produced by Plaintiffs.

Parties agree to work together to settle any disputes, anything that cannot be resolved may be brought to the Court for resolution.

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